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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GREY FOX, LLC, et al.,

Plaintiffs,

v.

PLAINS ALL AMERICAN PIPELINE,
L.P. et al.,

Defendants.

Case No. 2:16-cv-03157-PSG-JEM

**PLAINTIFF GREY FOX'S MOTION
IN LIMINE NO. 2: EXCLUDE
EVIDENCE OR ARGUMENT
ABOUT *VENOCO* PUNITIVE
DAMAGES RULING**

Trial Date: June 6, 2024
Judge: Hon. Philip S. Gutierrez

1 Plaintiff respectfully moves the Court for an Order excluding any reference,
 2 argument, or evidence at trial related to the punitive damages ruling in *Eugene Davis, et*
 3 *al. v. Plains Pipeline LP, et al*, Dkt. 307-3, Exh. 24 (the “Venoco Order”), and the fact
 4 that this motion in limine was filed and/or granted. The state court ruling is hearsay, Fed.
 5 R. Evid. 802; it is not relevant to any issue the jury must decide, Fed. R. Evid. 402; and
 6 allowing evidence and argument concerning this ruling will lead to unnecessary prejudice,
 7 confusion, misleading the jury, undue delay, and wasted time. Fed. R. Evid. 403.

8 I. LEGAL STANDARD

9 The Court has broad discretion to manage the conduct of a trial and the evidence
 10 presented by the parties. *Navellier v. Sletten*, 262 F.3d 923, 941–42 (9th Cir. 2001). A
 11 motion *in limine* is a pretrial procedural tool courts may use to limit evidence, testimony,
 12 or argument that the jury may hear. *United States v. Heller*, 551 F.3d 1108, 1111 (9th Cir.
 13 2009). A motion in limine is not restricted to evidentiary matters and may be used to
 14 prevent unwanted behaviors at trial, challenge evidence or practices that might be
 15 confusing to the jury, or to maintain the status quo at trial until the court can decide a
 16 disputed matter. For example, the motion may be used to prohibit reference to matters
 17 during *voir dire*, to prevent a party or witness from engaging in expected bad behaviors
 18 or demonstrations, or to prevent the jury from hearing objectionable questions and
 19 statements, the prejudicial effect of which might not be cured by a court’s admonishment
 20 or limiting instruction. The court may order a party and its counsel not to mention the fact
 21 a motion *in limine* was filed or granted. Stephen E. Arthur & Robert S. Hunter, *Federal*
 22 *Trial Handbook: Civil* § 7:4 (4th ed. 2019).

23 II. ARGUMENT

24 As an initial matter, the *Venoco* Order is not on Plains’ preliminary exhibit list
 25 disclosed to Plaintiff on April 17, 2024. Thus, it does not appear Plains has any intention
 26 of introducing this order into evidence or arguing to the jury about it; nonetheless, perhaps
 27 for tactical reasons, it has not agreed to the relief that this Motion seeks, necessitating this
 28 Motion.

1 Assuming Plains does intend to introduce argument and evidence about the *Venoco*
 2 Order, either during *voir dire* or after a jury is seated, this Court should exclude it. The
 3 order is hearsay, it is inadmissible under Fed. R. Evid. 402 and, even if relevant, its
 4 probative value is substantially outweighed by the risk of “unfair prejudice, confusing the
 5 issues, misleading the jury, undue delay, wasting time, or needlessly presenting
 6 cumulative evidence.” Fed. R. Evid. 403.

7 *First*, the Order is not relevant to the issues the jury must decide. A Court’s pretrial
 8 ruling, as a matter of law, based on evidence offered in opposition to summary judgment
 9 by another party who is not part of this litigation is not probative of the facts this jury will
 10 be asked to resolve based on the evidence Plaintiff provides at this trial.

11 *Second*, to the extent Plains seeks to introduce the *Venoco* Order to provide it did
 12 not act in a way that subjects it to punitive damages, it is hearsay. *See United States v.*
 13 *Boulware*, 384 F.3d 794, 806 (9th Cir. 2004) (“A prior judgment is therefore hearsay to
 14 the extent that it is offered to prove the truth of the matters asserted in the judgment. A
 15 prior judgment is not hearsay, however, to the extent that it is offered as legally operative
 16 verbal conduct that determined the rights and duties of the parties.”). Moreover, the order
 17 is not subject to any of the exceptions in Federal Rule of Evidence 803.

18 *Third* and finally, even if relevant and not hearsay, the *Venoco* Order is
 19 substantially more prejudicial, confusing, misleading, confusing, and wasteful than it is
 20 probative under Fed. R. Evid. 403. *See United States v. Olano*, 62 F.3d 1180, 1204 (9th
 21 Cir. 1995) (“[T]rial courts have very broad discretion in applying Rule 403[.]”) (alteration
 22 in original) (quoting *Borunda v. Richmond*, 885 F.2d 1384, 1388 (9th Cir. 1988)). Here,
 23 presenting an order from another court as evidence—rather than establishing that it
 24 resolves an issue under the doctrine of collateral estoppel¹—would likely confuse jurors
 25 by suggesting a key issue that they must resolve (should Plains be subject to punitive
 26 damages) has already been resolved by a court.

27 ¹ Plains cannot show that the elements of collateral estoppel are met here. *See Oyeniran v.*
 28 *Holder*, 672 F.3d 800, 806 (9th Cir. 2012) (stating four-part test).

III. CONCLUSION

For the reasons stated above, Plaintiff Grey Fox respectfully requests that the Court grant this motion *in limine* excluding any reference at trial, including *voir dire*, to Venoco Order, and the fact that this motion was filed and/or granted.

DATED: April 22, 2024.

Respectfully submitted,

KELLER ROHRBACK L.L.P.

By: /s/ Matthew J. Preusch

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Attorneys for Individual and Representative Plaintiffs

CERTIFICATE OF SERVICE

I, hereby certify that on April 22, 2024, I electronically filed **Plaintiff Grey Fox's MIL No. 2: Exclude Evidence or Argument about Venoco Punitive Damages Ruling** with the Clerk of the United States District Court for the Central District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Matthew J. Preusch

Mathew J. Preusch
Keller Rohrback L.L.P.